

Claimant alleged that he injured both of his hands when he was electrocuted changing a fluorescent lamp while working for the respondent on June 24, 1992. Claimant was first treated for apparent electric exposure on the date of his accident at Central Kansas Medical Center Emergency Room in Great Bend, Kansas. Claimant was examined, given medication, released and given instructions to follow-up with Dr. Merle Fieser for any problems. Claimant testified that he saw Dr. Fieser for treatment one or two times after the date of accident. Claimant further testified that Dr. Fieser treated

him on one of the two occasions within one or two days following the accident. However, the respondent offered into evidence a medical record of Dr. Fieser which indicated that the first and only time she saw the claimant was on January 28, 1993 during the six months subsequent to the date of accident. The respondent also offered and it was admitted into the preliminary hearing record a payment ledger from the respondent's insurance carrier which established that Dr. Fieser was only paid for treating the claimant once and that was on January 28, 1993.

Claimant established through his testimony that neither the respondent nor its insurance carrier notified him that they would not continue to provide treatment for his injuries at any time between the date of accident and the date that he was treated by Dr. Fieser on January 28, 1993. The respondent, during the preliminary hearing proceedings, also stipulated that the medical treatment that was provided by Dr. Fieser on January 28, 1993 was authorized medical treatment.

Evidence was submitted by the respondent that proved that the respondent had filed an Employer Report of Accident, Form A, with the Director of Workers Compensation as required by K.S.A. 44-557(a) on July 8, 1992. Accordingly, claimant was required by K.S.A. 44-520a to serve upon respondent written claim for compensation within two-hundred (200) days after his date of accident, or in cases where compensation payments have been suspended, within two hundred (200) days after the date of last payment of compensation.

Claimant argues that once the respondent furnished medical treatment that the respondent had a positive duty to notify him that the medical treatment had been terminated if the respondent intended to rely on the two-hundred (200) day written claim statute. Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973). Claimant argues the respondent did not notify the claimant that they were terminating medical treatment, therefore, the written claim that the claimant sent to the respondent on January 27, 1993 was timely. On the other hand, the respondent contends that the claimant is barred from benefits provided by the workers compensation act because the written claim sent to the respondent by the claimant was not within two-hundred (200) days from the date of claimant's accident or within two-hundred (200) days from the date claimant was last furnished medical by respondent. Furnishing of medical care by an employer to an injured worker has been held to be equivalent to payment of compensation under the workers compensation act. Riedel v. Gage Plumbing & Heating Co., 202 Kan. 538, 539, 449 P. 2d 521 (1969). However, if two-hundred (200) days have elapsed since the medical treatment was last furnished before written claim is served, then furnishing of medical treatment is ineffective to revive claimant's right to file his written claim. Rutledge v. Sandlin, 181 Kan. 369, 310 P. 2d 950 (1957).

The Appeals Board finds, for preliminary hearing purposes, that the facts of this case establish that more than two-hundred (200) days elapsed from the date of accident and the providing of medical treatment by the respondent, June 24, 1992 and January 27, 1993, the date claimant sent respondent a written claim for compensation benefits. Although, the respondent again furnished claimant medical treatment on January 28, 1993, claimant's right to serve a written claim was not revived because two-hundred (200) days had elapsed between the date medical treatment was last furnished following the date of accident and the furnishing of additional medical treatment following the service of written claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated December 13, 1995, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, Kansas
Gregory D. Worth, Lenexa, Kansas
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director